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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,403	06/17/2005	Martin Jakubowski	A74US	4538
7590 Martin Jakubowski Patenbuero Paul Rosenich BGZ FL-9497 Triesenberg, Liechtenstein, GERMANY			EXAMINER EDGAR, RICHARD A	
			ART UNIT 3745	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,403

Applicant(s)

JAKUBOWSKI ET AL.

Examiner

Richard Edgar

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2008 under 37 CFR 1.114.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20,44-47,49-53,55-60 and 62-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20,44-47,49-53,55-60 and 62-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 February 2008 has been entered.

Response to Arguments

Applicant's arguments filed 13 February 2008 have been fully considered but they are not persuasive.

With respect to the apparatus claims 20, 44-47, 49-50, 57-60, 62-65, Applicant first argues the WO 01/73292 A1 reference is a raft and cannot be below the wave motion area and therefore cannot have blocked thrust. Applicant's claim 20 is replete with functional language which fails to limit the claim language, but in the interest of compact patent prosecution, the best available art was applied to the claims. Removing the functional language, the claim merely recites a foundation having a buoyant lower part of a foundation body and an upper part, a cable tethered to the upper part and the body, and two chambers; the rest of the functional language fails to limit the claim as Applicant may believe. So, even regardless that the '292 reference doesn't teach blocked vertical thrust explicitly, which the examiner does not concede, the claims only require a structure capable of such a feat; and based on Applicant's disclosure, the

'2992 reference is quite capable of being submersed to such a depth to block vertical thrust.

Next, with respect to the independent method claim 51, the functional language regarding the blocked vertical thrust is likewise non-limiting, as the claim merely recites to immerse the foundation body, wherein the body is adapted to have adjustable buoyancy with blocked thrust; and the '292 reference has not been shown incapable of being adapted to have an adjustable buoyancy with blocked thrust. In fact, the '2992 reference seems to expressly teach to ballast the tanks 4a,4b. Further, counterweight does not structurally distinguish over a sea floor, for instance, and the sea floor is a counterweight to the buoyant foundation.

The remaining arguments merely rely upon the patentability of the independent claims to similarly define the patentability of the dependent claims. As the independent claim arguments have been deemed unpersuasive, the arguments regarding the dependent claims are likewise unpersuasive.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 65 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under

35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 20, 44-47, 49-53, 55-60, 62-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The independent claims 20 and 51 require the foundation body "adapted to be anchored with blocked vertical thrust," and "adapted to have adjustable buoyancy with blocked thrust," respectively. Applicant's arguments with respect to claim 20 argue that the applied reference is opposite of a blocked trust apparatus (page 8, lines 16-17). It is unclear if the argument is also applicable to claim 51.

The reference applied, WO 01/73292 A1, recites on page 10, lines 28-29 "The raft should be designed to lie so deep in the water that large waves can wash over it. In this manner, it is possible to stabilize the windmill at high seas." Applicant argues however, that the '292 reference is affected by waves and is therefore not a body with blocked thrust. The examiner's only conclusion, is that a non-enabling disclosure of

"blocked vertical thrust" has been offered by Applicant. The '292 drawings have not been labeled as drawn to scale, and based on the disclosure of the '292 reference, included above for Applicant's sake, one having ordinary skill in the art cannot make the invention claimed by Applicant as "blocked vertical thrust" is non-enabled.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 65 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 65 provides for the use of a wind turbine but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 44-47, 51, 53, 55, 59 and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by WIPO International Publication Number WO 01/73292 A1.

WIPO International Publication Number WO 01/73292 A1 shows a buoyant foundation comprising a foundation body 4 having an upper part of the foundation adapted to support a turbine tower having a wind turbine 10 extending therefrom wherein the foundation body 4 is adapted to be submerged below a wave motion area of water (see page 4, lines 1-3). A tension cable 5 is tethered to the turbine tower 1 and the foundation body 4. The tower comprises a chamber for electrical installation 2 and a chamber for storage 1. An anchoring system 8 extends from the foundation body 4 and the floor of the body of water (see page 11, lines 6-8). The foundation body 4 comprises integrated hollow tubes constructed as a single piece (see Fig. 4a, 4b) which are adjusted with water and air to adjust the buoyancy of the foundation. As described on page 5, lines 1-4, the foundation is allowed to rotate around the counterweights, and therefore, the counterweights are adapted to have adjustable buoyancy.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO International Publication Number WO 01/73292 A1 in view of Japanese Patent Application Laid-open No. 2002-285951.

WIPO International Publication Number WO 01/73292 A1 discloses an offshore wind turbine, but no fish farming base.

Japanese Patent Application Laid-open No. 2002-285951 discloses an offshore wind turbine having a base for farming fish (see abstract).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify WIPO International Publication Number WO 01/73292 A1 to include a fish farming base as taught by Japanese Patent Application Laid-open No. 2002-285951 for the purpose of farming fish.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO International Publication Number WO 01/73292 A1 in view of Japanese Patent Application Laid-open No. 2002-285951 as applied to claim 49 above, and further in view of United States Patent No. 5,617,813.

Japanese Patent Application Laid-open No. 2002-285951 discloses a fish farm installation at a floating wind power installation, but not a cage or net.

United States Patent No. 5,617,813 shows a fish farming installation uses a cage or net 32, 36 to contain fish.

Since Japanese Patent Application Laid-open No. 2002-285951 teach to farm fish and United States Patent No. 5,617,813 teaches to use a net to farm fish, it would

have been obvious at the time the invention was made to a person having ordinary skill in the art to use a net in the fish farming installation of Japanese Patent Application Laid-open No. 2002-285951 as taught by United States Patent No. 5,617,813 for the purpose of containing fish.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO International Publication Number WO 01/73292 A1 as applied to claim 51 above, and further in view of Great Britain Patent 849,887.

WIPO International Publication Number WO 01/73292 A1 shows a floating wind turbine 10 on pontoons 4 but does not show an adjustable anchoring system comprising counterweights which are adjusted to control the depth of the platform.

Great Britain Patent 849,887 teach a floating platform 152 comprising pontoons 160 and counterweights 174 which are adjustable to control the depth of the platform 152.

Since WIPO International Publication Number WO 01/73292 A1 is a floating platform on pontoons, and Great Britain Patent 849,887 teaches a floating platform on pontoons with counterweights that are adjustable to control the depth of the platform, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of WIPO International Publication Number WO 01/73292 A1 to have adjustable counterweights as shown by Great Britain Patent 849,887 for the purpose of adjusting the depth of the wind turbine platform.

Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO International Publication Number WO 01/73292 A1 as applied to claim 55 above, and further in view of Japanese Patent Application Laid-open No. 2002-285951.

WIPO International Publication Number WO 01/73292 A1 shows a floating wind turbine installation but does not mention a fish farming installation attached thereto.

Japanese Patent Application Laid-open No. 2002-285951 teaches in the Abstract, a fish farming installation attached to a floating wind turbine installation for the purpose of harvesting fish.

Since WIPO International Publication Number WO 01/73292 A1 teaches a floating wind turbine installation and Japanese Patent Application Laid-open No. 2002-285951 teaches attaching a fish farming installation to a floating wind turbine installation, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the WIPO International Publication Number WO 01/73292 A1 to have a fish farming installation as taught by Japanese Patent Application Laid-open No. 2002-285951 for the purpose of harvesting fish.

Claims 57, 58 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO International Publication Number WO 01/73292 A1.

WIPO International Publication Number WO 01/73292 A1 shows a raft-type foundation 4, but not being a hexagonal shape.

The foundation supports the turbine in a body of water. The specific shape of the foundation as being a hexagonal shape has not been disclosed as serving any

advantage or particular purpose nor whether it solves a stated problem. Since the WIPO International Publication Number WO 01/73292 A1 foundation would equally support the turbine as that claimed in claims 57, 58 and 60, it would have been an obvious matter of design choice to modify the foundation geometry of WIPO International Publication Number WO 01/73292 A1 to be as that claimed.

Claims 62-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO International Publication Number WO 01/73292 A1 as applied to claim 58 above, in view of Japanese Patent Application Laid-open No. 2002-285951.

WIPO International Publication Number WO 01/73292 A1 discloses an offshore wind turbine, but no fish farming base.

Japanese Patent Application Laid-open No. 2002-285951 discloses an offshore wind turbine having a base for farming fish (see abstract).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify WIPO International Publication Number WO 01/73292 A1 to include a fish farming base as taught by Japanese Patent Application Laid-open No. 2002-285951 for the purpose of farming fish.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Edgar whose telephone number is (571) 272-4816. The examiner can normally be reached on Monday thru Friday, 7 am- 5 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Edgar/
Primary Examiner
Art Unit 3745

RE